in some cases where the agreement was to pay money. *Phelps* v. *Illinois Central R. Co.*, 63 Ill. 468; *Garcin* v. *Pennsylvania Furnace Co.*, 186 Mass. 405, 71 N. E. 793. But in the majority of cases, the agreement as to time and the forfeiture of rights is treated merely as security for the purchase price, and upon tender of the purchase money plus interest within a reasonable time, equity will relieve from the forfeiture and compel specific performance. *Sanford* v. *Weeks, supra; Barnard* v. *Lee*, 97 Mass. 92.

HUSBAND AND WIFE—FAMILY EXPENSES CHARGEABLE ON WIFE'S PROPERTY—ATTORNEY'S FEES.—Plaintiff defended defendant's husband in a prosecution on charge of felony, and brought an action to charge defendant's property for the services under a statute making such property liable for "reasonable and necessary family expenses". *Held*, fees for such services were not a family expense. *Sager, Sweet & Edwards* v. *Risk* (Iowa), 180 N. W. 299.

In recent years statutes have been enacted in several States making "family expenses" a charge on the property of the wife as well as the husband. *Murdy* v. *Skyles*, 101 Iowa 549, 70 N. W. 714, 63 Am. St. Rep. 411; *Dodd* v. *St. John*, 22 Ore. 250, 29 Pac. 618, 15 L. R. A. 717; *Russell* v. *Graumann*, 40 Wash. 667, 82 Pac. 998, 5 Ann. Cas. 830. Being in derogation of the common law, they are naturally to be strictly construed. The liability of the wife thus created cannot be enlarged by any act of the husband, nor is it dependent on her own consent. Hence she may be charged for what is actually sold on the husband's credit to him, if it is for family use. *McCartney, etc., Co.* v. *Carter*, 129 Iowa 20, 105 N. W. 339, 3 L. R. A. (N. S.) 145.

As to what actually falls within the term "family expenses" no comprehensive definition has been yet attempted, but the facts in the particular cases arising are largely determinative. *Houck* v. *La Junta Hardware Co.*, 50 Colo. 228, 114 Pac. 645, 32 L. R. A. (N. S.) 939. It is essential that the expenditures made should be purely for services rendered to the family or for property kept for family use, although they need not be for "necessaries" in the sense in which that term is usually applied. *Dodd* v. *St. John, supra; Von Platen* v. *Krueger*, 11 Ill. App. 627. Medical services rendered to any member of the family are well within the rule and chargeable upon the wife's property or upon her personally, if that kind of liability is imposed. *Leake* v. *Lucas*, 65 Neb. 359, 91 N. W. 374, 93 N. W. 1019, 62 L. R. A. 190; *Vest* v. *Kramer* (Iowa), 114 N. W. 886, 14 L. R. A. (N. S.) 1032; *Russell v. Graumann, supra.* It was argued in the instant case that the analogy to legal services in a prosecution for a felony was controlling, but the court reasoned that such a ruling would lead to making the wife liable for attorney's fees in any litigation which the husband himself might institute. A possible distinction might be drawn between those cases when the husband was the plaintiff and when he was defendant, but no mention was made of it by the court. Clothing purchased by the husband has been held to be family expense. *Hudson* v. *King*, 23 Ill. App. 118. So has a diamond shirt stud obtained for personal use. *Neasham* v. *McNair*, 103 Iowa 695, 72 N. W. 773, 38 L. R. A. 847. But see *Hyman* v. *Harding*, 162 Ill. 357,

44 N. E. 754, as to a diamond and ruby ring. Wages of servants are chargeable under the statutes under consideration. *Perkins* v. *Morgan*, 36 Colo. 360, 85 Pac. 640. So also as to the rent of a house ultilized as a family residence. *Houghteling* v. *Walker*, 100 Fed. 253. But the cost of maintaining an insane husband in an asylum is not a "family expense". *Blackhawk County* v. *Scott*, 111 Iowa 190, 82 N. W. 492. Nor is the taking care of a drunken husband such an expense. *Featherstone* v. *Chapin*, 93 Ill. App. 223. Nor is the wife chargeable with the rent of a farm upon which she lived with her husband, who farmed the land as a business proposition. *Hecht* v. *Gitch*, 82 Iowa 596, 48 N. W. 988. See also *Chamberlain* v. *Townsend*, 72 Ore. 207, 142 Pac. 782, 143 Pac. 924.

There is no statute in Virginia making the wife's property liable for family expenses.

INSURANCE—WAIVER—RETENTION OF PREMIUM.—The plaintiff was beneficiary under a contract of insurance contemplated between the insured and the defendant. The insured filed his application and paid the first premium, and while the application was in the home office, but before acceptance, the insured was murdered. The defendant, without knowledge of the murder, accepted the application and mailed the policy, retaining the premium. Both the application and the policy contained the statement that the policy was not to become binding until delivered to the insured in good health. An action was brought by the plaintiff to recover the insurance on the ground that the company by retaining the premium waived its right to rescind. *Held*, defendant is not liable. *Young* v. *Intersouthern Life Ins. Co.* (Ind. App.), 128 N. E. 940.

It is possible for a valid contract of insurance to be made without delivery of the policy. *Sheldon* v. *Connecticut Mut. Life Ins. Co.*, 25 Conn. 207, 65 Am. Dec. 565. But such cases are comparatively rare, and a stipulation that the policy is not to become binding until delivered is a valid condition precedent. *Hawley* v. *Michigan Mut. Life Ins. Co.*, 92 Iowa 593, 61 N. W. 201; *Ray* v. *Security Trust & Life Ins. Co.*, 126 N. C. 166, 35 S. E. 246. Moreover, it may be required that the delivery be made to the insured while in good health. *Metropolitan Life Ins. Co.* v. *Willis*, 37 Ind. App. 48, 76 N. E. 560. If the policy requires delivery to the insured in good health and the insured dies before delivery, the policy is void. *Reserve Loan Life Ins. Co.* v. *Hockett*, 35 Ind. App. 842, 73 N. E. 842.

Thus in the instant case, because of the stipulation in the policy and application, *prima facie* a contract of insurance was never executed. But did the insurer waive the right to enforce these stipulations by its retention of the premium?

Waiver has been defined as the "intentional relinquishment of a known right". *Lehigh Valley R. Co.* v. *Providence Ins. Co.*, 172 Fed. 346; see "Waiver", 8 WORDS AND PHRASES 7375. This involves at least four elements: there must be an existing right; the act of waiver must be voluntary; there must be knowledge of the right; and the waiver must be intentional. Any right affecting either party, except where public policy requires the maintenance of the right, may be waived. Thus it would seem that the insurer could waive those stipulations calling for de-